

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CR-16-185-F
)	
WAYNE BARNES,)	
)	
Defendant.)	

* * * * *

TRANSCRIPT OF PROCEEDINGS
HAD ON FEBRUARY 9, 2017, AT 3:00 P.M.
BEFORE THE HONORABLE STEPHEN P. FRIOT
U.S. DISTRICT JUDGE, PRESIDING

* * * * *

CHANGE OF PLEA

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

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P R O C E E D I N G S

(The following proceedings were had February 9, 2017,
with Court, counsel, and defendant present:)

THE COURT: Good afternoon. We are here in Criminal
16-185, United States of America vs. Wayne Barnes, for a
change of plea proceeding.

Counsel will please give your appearances.

MS. BARRY: Good afternoon, your Honor. Julia Barry
on behalf of the United States. With me at counsel table, my
cocounsel, Kristy Parker, from the civil rights division, and
Special Agent Charles Thumann.

THE COURT: Thank you.

MR. WYATT: Bob Wyatt on behalf of the defendant,
who is present at counsel table. Also with me at counsel
table is Ryan Haney, an associate in my office, your Honor.

THE COURT: Thank you. You may be seated.

Let me give everyone just a bit of an introduction to the
posture of this matter at this point. It's a little bit
unusual for plea proceedings in this court. I do have before
me a plea petition contemplating a plea to Count I of the
Indictment and a plea agreement proposing a plea and
conclusion of this case under Rule 11(c)(1)(C), which is
unusual to say that -- at least in this court.

I met with counsel not too terribly long ago, and we
talked about the Rule 11(c)(1)(C) aspect of the matter. We

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1 had an opportunity to discuss -- and very professionally so on
2 both sides -- the general factual scenario. And it was my
3 conclusion -- although most assuredly not a commitment of any
4 kind, it was my conclusion that it looked reasonably favorable
5 in terms of the Court's ultimate acceptance of the Rule
6 11(c)(1)(C) plea. Obviously, the plea itself leaves a fair
7 amount of leeway, and that's very much in the mix.

8 So the Court's ultimate acceptance of the Rule
9 11(c)(1)(C) plea, which I will say, once again, is unusual for
10 this district but I think justified in this case, is subject
11 to review of the presentence report. Frankly, I don't expect
12 any big surprises. I suppose that's a self-proving or
13 self-disproving statement, but I don't expect any big
14 surprises from the presentence report. Perhaps the better way
15 to say it is I'm assuming there will be no big surprises in
16 the presentence report.

17 And it's on that basis that we are proceeding. So I am
18 going to take the defendant's plea. Assuming that we
19 successfully complete the plea -- and I have no doubt -- no
20 real doubt about that -- assuming we successfully complete the
21 plea, then the probation office will be directed to prepare
22 the presentence report, and with the benefit of the
23 presentence report and perhaps the parties' sentencing
24 memoranda, I will make my final decision. But, as I say,
25 things -- we wouldn't be here if I didn't see things pointing

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1 in the general direction of accepting -- ultimately accepting
2 the Rule 11(c)(1)(C) plea agreement that has been breached.

3 So with the benefit of that background, does either side
4 have any concerns about proceeding on that basis this
5 afternoon?

6 What says the government?

7 MS. BARRY: No, your Honor.

8 THE COURT: What says the defendant?

9 MR. WYATT: No, your Honor.

10 THE COURT: Very well.

11 The defendant and his counsel will please come to the
12 lectern. And I will ask the two of you to please trade
13 places.

14 MR. WYATT: Yes, sir.

15 THE COURT: Both of those microphones will pick you
16 up.

17 And the clerk will please administer the oath to the
18 defendant.

19 THE CLERK: Please raise your right hand.

20 (Defendant sworn.)

21 THE COURT: State your full name, please, sir.

22 THE DEFENDANT: Wayne Evans Barnes.

23 THE COURT: Mr. Barnes, do you understand that you
24 are now under oath and if you answer any of my questions
25 falsely, your answers may later be used against you in another

1 prosecution for perjury or making a false statement? Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: In a few minutes, government counsel
5 will be asking you questions which you will answer under oath
6 for the purpose of establishing a factual basis for your plea.
7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And that brings me to one very important
10 point, and that is this: If I or anyone else should say or do
11 anything here this afternoon that you do not fully understand,
12 or if at any time you have any questions, I want you to
13 interrupt and ask me your question. And we will go no further
14 until I have fully answered your question. So will you do
15 that for me?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I see here that you are 56 years old and
18 you have 20 years of education; is that right?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. I take it from that, obviously,
21 you are fully literate. Did you carefully review this plea
22 petition --

23 THE DEFENDANT: Yes, sir.

24 THE COURT: -- with your counsel at or before the
25 time you signed it?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And did you also carefully review the
3 plea agreement at or before the time you signed it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Have you been treated recently
6 for any mental illness or addiction to narcotic drugs of any
7 kind?

8 THE DEFENDANT: No, sir.

9 THE COURT: As you stand before the Court today, are
10 you under the influence of any drug, medication, or alcoholic
11 beverage of any kind?

12 THE DEFENDANT: No, sir.

13 THE COURT: As you know, you are before the Court on
14 the basis of this one-count Indictment that was returned and
15 filed early last October. Have you received a copy of these
16 charges?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And have you fully discussed these
19 charges and the case in general with your counsel, Mr. Wyatt?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you fully satisfied with the counsel
22 representation and advice given to you in this case by
23 Mr. Wyatt?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Mr. Barnes, has anyone attempted in any

1 way to force you to plead guilty in this case?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you pleading guilty of your own free
4 will to the one count in this Indictment because you are, in
5 fact, guilty of that offense?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Are you a United States citizen?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that the offense to
10 which you are pleading guilty is a felony offense and that if
11 your plea is accepted, you will be adjudged guilty of that
12 offense, and that adjudication may deprive you of valuable
13 civil rights, such as the right to vote, the right to hold
14 public office, the right to serve on a jury, and the right to
15 possess any kind of a firearm? Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: The government will please state two
18 things: Number one, the maximum possible penalty provided by
19 law, and please repeat for the record the essential term of --
20 terms of the Rule 11(c)(1)(C) agreement with respect to
21 sentencing.

22 MS. BARRY: Certainly, your Honor.

23 Mr. Barnes today is pleading guilty to a one-count
24 Indictment, as your Honor indicated, charging him with
25 depriving an inmate of his civil rights under color of law

1 under 18 U.S.C. Section 242. It carries up to life in prison,
2 a maximum \$250,000 fine, a term of supervised release of up to
3 five years, and a \$100 special assessment.

4 The plea agreement in this case, as your Honor has
5 indicated, is a bit unusual. The parties have entered into
6 this agreement under Federal Rule of Criminal Procedure
7 11(c)(1)(C), pursuant to which they agree that should the
8 Court choose to accept the plea agreement, a sentence of
9 between zero and 51 months in this case is appropriate.

10 The parties further agree, pursuant to that agreement,
11 that Mr. Barnes should receive a two-level downward adjustment
12 for his acceptance of responsibility in this case and that the
13 United States here moves for an additional one-level downward
14 adjustment for his speedy resolution of the matter.

15 The parties further agree that the Court will enter an
16 order of restitution to all victims of Mr. Barnes' criminal
17 conduct, and Mr. Barnes agrees that he must pay restitution as
18 ordered by the Court.

19 In exchange for the promises and concessions made by the
20 United States in this case, Mr. Barnes knowingly and
21 voluntarily is waiving his right to appeal his guilty plea or
22 any other aspect of his conviction, appeal his sentence
23 provided that it is within that zero to 51-month range that's
24 been contemplated by the parties, or to collaterally challenge
25 or move to modify his conviction or sentence except with

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1 respect to ineffective assistance of counsel claims.

2 THE COURT: Thank you.

3 Mr. Barnes, I am going to -- having heard the statement
4 as just now made by Ms. Barry, I am going to ask you two or
5 three questions. Number one, you have heard the outline of
6 the possible consequences of your plea. Do you understand
7 those possible consequences of your plea?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And, number two, as long as you are
10 sentenced within the range set forth in the plea agreement,
11 you are giving up your right to appeal the sentence. Do you
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Very well. Number three, I don't think
15 a dollar amount has been set for restitution. Am I right
16 about that?

17 MS. BARRY: That is correct, your Honor. The United
18 States has not received any restitution requests from the
19 victim of this case, which would here be the victim's family.
20 I do not contemplate necessarily receiving such requests. If
21 the United States were to receive such information, I think I
22 would request a separate restitution hearing where the parties
23 could present evidence.

24 THE COURT: Very well. So that one aspect of the
25 matter is not determined with certainty, I think is the

1 fairest way to put it. It is, at least, theoretically
2 possible that there will be a request for restitution. How
3 that would all play out no one knows. But in the event that
4 an appropriate request for restitution is made, then it will
5 be my duty to resolve any issues relating to that. Do you
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. Very well.

9 Now, I am going to talk to you just a bit about the
10 sentencing guidelines. Again, this is a bit of an unusual
11 situation in that if this case is -- goes to a conclusion on
12 the basis of the -- these plea proceedings, then they are --
13 by definition there will be an upper and lower limit on the
14 range of incarceration that's possible in this case. But it's
15 still, I think, important for me to talk about the sentencing
16 guidelines because my ultimate decision in this case, at
17 least, will be made with one eye to the advisory guidelines.
18 The guidelines are only advisory. And come sentencing, it's
19 going to be my duty to hear everything the government has to
20 say and everything that you have to say, either both directly
21 and through your very capable counsel.

22 So the guidelines are not the be all end all in this
23 case. And I want you to understand that. But I think it is
24 important for everyone to understand that it is my duty in
25 sentencing, even in this sort of a situation, to be mindful of

1 what the guidelines have to offer on an advisory basis. And
2 the extent of the influence of that on sentencing is yet to be
3 determined.

4 So with that understanding, I am assuming that -- without
5 getting into the substance of any conversation that you have
6 had with Mr. Wyatt, I'm assuming that you and Mr. Wyatt have
7 had some conversation about what the advisory guideline range
8 of punishment might be in this case. Am I right about that?

9 THE DEFENDANT: That's correct, your Honor.

10 THE COURT: Very well.

11 I will not be able to determine the advisory guideline
12 range that I look at in order for whatever influence it may or
13 may not have on the sentence until after the presentence
14 report has been completed and you and the government have had
15 an opportunity to challenge the reported facts and the
16 application of the advisory guidelines as recommended by the
17 probation officer. And the sentence ultimately imposed by the
18 Court in this case, if it's pursuant to this plea agreement,
19 will be within the range specified in the plea agreement. And
20 it may or may not line up with what the guidelines say. Do
21 you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: After your advisory guideline range has
24 been determined, the Court does have the authority to depart
25 either within or outside of the framework of the advisory

1 guidelines and to impose a sentence that is more severe or
2 less severe than the sentence called for by the advisory
3 guidelines. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: In determining the sentence in this
6 case, I will consider your entire background and criminal
7 history, if any, including the conduct described in the charge
8 you are pleading to as well as any other relevant or similar
9 conduct whether or not that conduct is charged in this case.
10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: For these reasons, Mr. Barnes, I want
13 you to understand that, as a practical matter, as you stand
14 before the Court today, subject to the upper and lower limits
15 in the agreement, I have no way of knowing with any certainty
16 what the consequences of your plea will be. And, for that
17 reason, you have -- subject to those upper and lower limits,
18 you have no way of knowing with any certainty what the
19 consequences of your plea will be. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: By pleading guilty, you are giving up
22 the right to have a jury determine one way or the other the
23 effects which, if proven to a jury beyond a reasonable doubt,
24 might result in a more severe sentence. Do you understand
25 that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And in the federal system, parole has
3 been abolished, and if you are sentenced to prison, you will
4 not be released on parole. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, we have talked about the plea
7 agreement, and Ms. Barry very certainly nicely covered the
8 essential terms of the plea agreement, including with respect
9 to waivers. To the very best of your knowledge, do you
10 understand the essential terms of that plea agreement with
11 respect to waivers? Do you believe you understand that
12 agreement?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Very well.

15 Mr. Wyatt, do you have any concerns about your client's
16 understanding of the waiver provisions of the plea agreement?

17 MR. WYATT: No, your Honor.

18 THE COURT: Very well.

19 Mr. Barnes, do you have any questions about the waiver
20 provisions in the plea agreement?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you agree with those waivers?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Very well.

25 I want to cover with you some rights that go along with

1 having a jury trial, because by pleading guilty you are giving
2 up these rights.

3 First of all, do you understand, sir, that you do have a
4 right to plead not guilty to any offense charged against you
5 and to persist in that plea, and that you would then have a
6 right to a trial by jury? Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: At that trial, you would be presumed to
9 be innocent and the government would have to prove your guilt
10 beyond a reasonable doubt. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: At that trial you would have the right
13 to the assistance of counsel for your defense, the right to
14 see and hear all the witnesses and have them cross-examined in
15 your defense, the right on your own part to decline to testify
16 unless you voluntarily elected to do so in your own defense,
17 and the right to the issuance of subpoenas or compulsory
18 process to compel the attendance of witnesses to testify in
19 your defense. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And if you were to decide not to testify
22 or put on any evidence, those facts could not be used against
23 you. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: By entering a plea of guilty, if that

1 plea is accepted by the Court, there will be no trial and you
2 will have waived or given up your right to a trial, as well as
3 all those other rights associated with a trial as I have just
4 described them. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: The government will please state the
7 elements of the offense to which the defendant is pleading
8 guilty.

9 MS. BARRY: Your Honor, deprivation of rights while
10 acting under color of law under 18 U.S.C. Section 242 carries
11 the following elements: First, that Mr. Barnes acted under
12 color of law; second, that he deprived Mr. Wilson of a right
13 secured or protected by the Constitution or laws of the United
14 States; third, that Mr. Barnes acted willfully; and for this
15 to be a felony conviction, which it is here, that bodily
16 injury or death resulted from the defendant's actions.

17 THE COURT: Thank you.

18 The government will now please examine the defendant to
19 establish the factual basis for the plea.

20 **WAYNE BARNES,**

21 having been previously duly sworn, was examined and testified
22 as follows:

23 **EXAMINATION**

24 BY MS. BARRY

25 Q Good afternoon, Mr. Barnes.

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1 A Hi.

2 Q In June of 2013, were you the jail administrator of the
3 McClain County jail?

4 A Yes, ma'am.

5 Q Is the McClain County jail in the Western District of
6 Oklahoma?

7 A Yes, ma'am.

8 Q Would you agree that a jailer or jail administrator must
9 act pursuant to law or under color of law?

10 A Yes, ma'am.

11 Q Would you further agree that you were acting under color
12 of law in your capacity as jail administrator between June
13 16th and June 19, 2013?

14 A Yes, ma'am.

15 Q Was Inmate Kory Wilson booked into McClain County jail on
16 or about June 16, 2013?

17 A Yes, ma'am.

18 Q At the time that Mr. Wilson was booked into the jail, was
19 he a Type 1 diabetic requiring insulin?

20 A Yes, ma'am.

21 Q The morning of June 19, 2013, were you aware that
22 Mr. Wilson represented that he was an insulin-dependent Type 1
23 diabetic?

24 A Yes, ma'am.

25 Q At that time, were you also aware that failure to provide

1 a diabetic with insulin for three days could create a serious
2 health risk for that person?

3 A Yes, ma'am.

4 Q Would you agree that the right to receive medical care is
5 a constitutional right under the due process clause under the
6 U.S. Constitution?

7 A Yes, ma'am.

8 Q Would you further agree that Mr. Wilson had a right to
9 receive such medical care?

10 A Yes, ma'am.

11 Q Were you the person in charge of making decisions at
12 McClain County jail on June 19, 2013?

13 A Yes, ma'am.

14 Q Were you aware that Kory Wilson suffered a diabetic
15 episode that day?

16 A Yes, ma'am.

17 Q Did you fail to obtain insulin for Mr. Wilson on June 19,
18 2013?

19 A Yes, ma'am.

20 Q Did you also decide not to transport Mr. Wilson to the
21 hospital on June 19, 2013?

22 A Yes, ma'am.

23 Q Were those decisions made willfully?

24 A Yes, ma'am.

25 Q Would you, therefore, agree that you willfully deprived

1 Kory Wilson of medical care?

2 A Yes, ma'am.

3 Q In other words, were you deliberately indifferent on June
4 19, 2013, to a risk that Mr. Wilson might suffer serious
5 bodily harm?

6 A Yes, ma'am.

7 Q Would you further agree that Kory Wilson died because you
8 willfully deprived him of that medical care?

9 A Yes, ma'am.

10 MS. BARRY: I have no further questions, your Honor.

11 THE COURT: Very well.

12 Mr. Barnes, how do you now plead to the charge set forth
13 in this Indictment, guilty or not guilty?

14 THE DEFENDANT: Guilty, sir.

15 THE COURT: It is the finding of the Court in the
16 case of United States of America vs. Wayne Barnes that the
17 defendant is fully competent and capable of entering an
18 informed plea; that he is aware of the nature of the charges
19 and the consequences of the plea so far as those consequences
20 can be known at this time; and that the plea of guilty is a
21 knowing and voluntary plea supported by an independent basis
22 in fact containing each of the essential elements of the
23 offense charged in the Indictment.

24 The plea is not at this point accepted with finality for
25 the reasons I have already said. At the appropriate time,

1 after I have the presentence report, I anticipate that I will
2 accept the plea and adjudge the defendant, with finality,
3 guilty of the offense charged in the Indictment.

4 As everyone understands, the next step will be the
5 preparation of the presentence report. After I review the
6 presentence report, I will make my final determination with
7 respect to acceptance of the plea. And at that point, we will
8 proceed with sentencing unless, contrary to my general
9 expectation, I reject the agreement set forth -- the
10 sentencing range set forth in the plea agreement.

11 So with that understanding, the matter is now referred to
12 the probation office for a presentence investigation and
13 report.

14 Mr. Barnes, I urge you to cooperate in every way with the
15 probation office in the preparation of that report. Because
16 although I am confident that that report will not be my only
17 source of information to consider with respect to sentencing
18 in this case, that report will certainly be an important
19 source of information for me to consider in connection with,
20 first of all, whether -- to accept the Rule 11(c)(1)(C)
21 agreement; and, number two, with respect to the ultimate
22 sentence to be imposed in this case.

23 You and Mr. Wyatt will have the opportunity to read that
24 report and file any objections to it before the sentencing
25 hearing. And you and Mr. Wyatt will certainly have the

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1 opportunity to speak on your behalf at the sentencing hearing.

2 So you are now referred to the probation office for a
3 presentence investigation and report. You and your attorney
4 should be sure to lodge any objections to that report within
5 the time allotted by the rules.

6 Because of the nature of the plea agreement and
7 specifically the range of possible punishment that is
8 contemplated by the plea agreement, I have no trouble
9 concluding that this case presents exceptional circumstances
10 with respect to the possibility of mandatory detention. And,
11 for that reason, it is my conclusion -- subject to any
12 announcement the government may have suggesting otherwise, it
13 is my conclusion that because of the fact that it is a Rule
14 11(c)(1)(C) agreement and, number two, because of the range of
15 punishment set forth in that plea agreement, that we do have
16 exceptional circumstances which point very strongly in the
17 direction of not detaining the defendant on this day.

18 What says the government?

19 MS. BARRY: Your Honor, we agree.

20 THE COURT: Very well.

21 That will be the order of the Court.

22 Now, Mr. Barnes, of course, you are on conditions of
23 release. It is very important for you to continue to comply
24 with your conditions of release. Any significant violation of
25 those conditions could have serious consequences.

1 And I can't say for sure when sentencing will take place,
2 but it does take a little time to prepare the presentence
3 report. And so it will be -- certainly be a little bit later
4 on in the spring before the matter comes on for sentencing.

5 Is there anything further in this matter this afternoon
6 from the government?

7 MS. BARRY: No, your Honor.

8 THE COURT: From the defendant?

9 MR. WYATT: No, your Honor.

10 THE COURT: Very well.

11 We have another matter at 3:30, so you are excused.

12
13 (Proceedings concluded at 3:30 p.m.)
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1 CERTIFICATE OF OFFICIAL REPORTER

2 I, Christina L. Clark, Federal Official Realtime Court
3 Reporter, in and for the United States District Court for the
4 Western District of Oklahoma, do hereby certify that pursuant
5 to Section 753, Title 28, United States Code that the
6 foregoing is a true and correct transcript of the
7 stenographically reported proceedings held in the
8 above-entitled matter and that the transcript page format is
9 in conformance with the regulations of the Judicial Conference
10 of the United States.

11
12 Dated this 16th day of February, 2017.

13
14 s/CHRISTINA L. CLARK
15 Christina L. Clark, RPR, CRR
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